

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

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5 In the Matter of:

6 EAST BROADWAY MALL, INC. Main Case No.
7 19-12280-dsj
8 Debtor.

9 - - - - -x

10 In the Matter of:

11 GRACE CHAN, Main Case No.
12 22-10700-dsj
13 Debtor.

14 - - - - -x

15 United States Bankruptcy Court
16 One Bowling Green
17 New York, New York

18
19 March 23, 2023
20 10:00 AM

21 B E F O R E:

22 HON. DAVID S. JONES
23 U.S. BANKRUPTCY JUDGE

24
25 ECRO: ELECTRONIC RECORDING

22-10700-dsj

1) Motion Filed by The United States Trustee to Convert Chapter 11 Case to Chapter 7 or to Dismiss this Chapter 11 Case.

19-12280-dsj

1) Motion to Approve Entry of an Order Approving (I) The Disclosure Statement for Plan of Liquidation; (II) Solicitation of Votes to Accept or Reject Plan of Liquidation and Notice Procedures; (III) Forms of Ballots and Notices in Connection Therewith; and (IV) Certain Dates with Respect Thereto.

Objections Filed.

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1 P R O C E E D I N G S

2 THE COURT: Good morning, everyone. It's Judge Jones.
3 We're here for a hearing in a proceeding by Zoom. I think I'm
4 going to call both cases on sort of simultaneously because it's
5 a combined discussion. So I'm going to hear a combined hearing
6 in two cases. One is number 22-10700, that's Grace Chan, an
7 individual Chapter 11. The other is 19-12280, East Broadway
8 Mall, Inc., also a Chapter 11.

9 Let me just get appearances stated and say who you're
10 representing. So I'll go around according to who I see.

11 First, I see Mr. Sullivan.

12 MR. SULLIVAN: Yes, Your Honor. James Sullivan,
13 Windels Marx Lane & Mittendorf. Counsel for Bank of Hope.

14 THE COURT: Great. And Ms. Keenan?

15 MS. KEENAN: Good morning, Your Honor. Sally Kennan,
16 Sferrazza & Keenan for the debtor, East Broadway Mall.

17 THE COURT: Great. And Ms. -- is it [Ko-nig]?
18 [Kay-nig]?

19 MS. KOENIG: It's a family fight all the time, but
20 it's supposed to be [Ko-nig]. So yeah, New York City Law
21 Department, representing the City of New York.

22 THE COURT: Okay. Nice to see you.

23 And I see we have Mr. Kass, as well, from the City?

24 MS. KOENIG: Yeah, he --

25 MR. KASS: Good morning, Your Honor. Zachary Kass for

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1 the New York City Law Department.

2 THE COURT: Nice to see you.

3 And Mr. Bruh?

4 MR. BRUH: Good morning, Your Honor. Mark Bruh for
5 the United States Trustee.

6 THE COURT: Great.

7 And Ms. Blumenfeld, nice to see you.

8 MS. BLUMENFELD: You, as well. Good morning, Your
9 Honor.

10 THE COURT: I'm sorry. That's Rachel Blumenfeld for
11 Ms. Chan, right?

12 MS. BLUMENFELD: That's right. Correct. Sorry about
13 that, Your Honor. That's correct.

14 THE COURT: Okay. No problem. Anyone else appearing
15 today? Okay. So let me tell you, I've given -- we had the
16 Chan case called two days ago, and I had everyone come back.
17 I'm going to -- I had some further thoughts after that. I'll
18 just say for the record, although everyone knows, Ms. Chan is
19 essentially the, I'll call her the owner of the East Broadway
20 Mall debtor. Things are really -- have really bogged down
21 somewhat in both cases. In the Chan case everything's on hold
22 to see what workout can or will or might be achieved in the
23 East Broadway Mall case. Meanwhile, I have let -- the last
24 word I got is a letter docketed March 3rd from counsel for Bank
25 of Hope saying they're entertaining offers from other potential

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1 business partners.

2 My inclination on reflection coming in, and you all
3 can tell me if this is a bad idea, is I'm going to want to hear
4 about the possible dismissal of the Chan case that was
5 discussed or floated two days ago, but on the East Broadway
6 Mall case, it seems to me, rather than keep on extending this
7 out because we have a moving target, it might -- I think it
8 makes sense to just deny the disclosure statement as it now
9 exists, probably, and give you a deadline for the filing of a
10 new disclosure statement with a new plan.

11 The reason for that is from everything I see, it seems
12 like negotiations are really ongoing, everyone's still trying
13 to find the optimal solution for this property. Bank of Hope
14 is the party that's been -- which is the secured lender -- is
15 the party that's been generating proposals, but I don't think
16 there's anything that's definite enough, unless you persuade me
17 otherwise, to proceed with and approve a disclosure statement
18 now and launch a confirmation process. And I've been
19 adjourning this motion a very, very long time. I think it
20 makes sense to just draw a line under it and tell you all you
21 need to start over and get it right and put it on a tight time
22 deadline. And then I'm thinking imposing a deadline for the
23 filing of a proposed plan and disclosure statement motion
24 within some quite short time, like I have in mind something
25 like thirty days.

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1 So that's -- I'm hitting you with all this upfront
2 because I don't believe in hiding the ball. And I wanted to
3 let you know that I have been giving this a lot of thought. So
4 let me -- I'm not sure who it makes sense to start with.

5 Let me actually start with Ms. Blumenfeld on the Chan
6 piece to ask if there's been any progress on that front.

7 MS. BLUMENFELD: Yes. Good morning and thank you,
8 Your Honor. Now, of course, if there is the choice or the
9 pick your poison, the debtor would prefer to have it dismissed.
10 However, that being said, I had a conference call with Ms.
11 Keenan, the debtor, the debtor's son, and they believe from
12 their discussions on their end, that the minute her case gets
13 dismissed or something happens, they're going to go after her
14 property. So they believe --

15 THE COURT: Who's they?

16 MS. BLUMENFELD: I believe, Bank of Hope, is my -- I
17 have not I have not been part of those discussions, but it's my
18 understanding it's Bank of Hope, and Ms. Keenan can probably
19 elaborate on that. I think that puts things in a different
20 light if that's the case, because then all we'll be looking at
21 is another filing.

22 THE COURT: Well, look. Okay. So that's where you're
23 at. And so I'm going to translate that as meaning that right
24 now, you're not -- a dismissal is less onerous than conversion,
25 but you have concerns about dismissal because of that risk of

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1 impact on Ms. Chan, right?

2 MS. BLUMENFELD: Exactly correct, Your Honor.

3 THE COURT: Okay. Okay. I mean, I will say,
4 nevertheless, it's tough to see a path forward in Chapter 11
5 for your client, and it's tough to see how things will play
6 out. Okay.

7 So let me hear -- but let me hear from Mr. Sullivan, I
8 guess, is the Bank of Hope advocate.

9 MR. SULLIVAN: Sorry, Your Honor, I was on mute.
10 There we go. Sorry. Do you want me to comment on the Chan
11 aspect of it, or do you want me to comment on --

12 THE COURT: You can comment on whatever you want. I
13 mean, I'm assuming that your primary purpose here -- well,
14 actually, yes. I would like to hear from you on what Ms.
15 Blumenfeld just said on Chan. But really, the primary thing
16 is, I want to hear you about the disclosure statement and if
17 there's any reason why what I laid out doesn't make sense at
18 this point.

19 MR. SULLIVAN: Okay. Your Honor, what I was going to
20 suggest to the Court, and I had kind of run it by counsel for
21 the City, although I had not seen a response from them on it,
22 but I think we've had conversations with them and I think
23 they're relatively on board. So we have -- like I reported a
24 couple of days ago, we have received additional proposals, and
25 these were largely unsolicited. We didn't even go out and

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1 really solicit them. But we currently have, aside and apart
2 from the debtor's proposal, which we understand that the City
3 rejected, we received three other proposals.

4 The original one was the one that was the -- around
5 which our plan and disclosure statement was framed. That was
6 the plan that was based on an offer that we had received from
7 Bill Lam (ph.) or an entity formed by Bill Lam or affiliated
8 with Bill Lam. And so since then, we've received two
9 additional offers. As a result of these additional offers, Mr.
10 Lam has increased his offer considerably.

11 And so what I was going to suggest -- what I had
12 suggested to the City was that we give everybody who has
13 expressed an interest so far one last opportunity to submit
14 what I would consider their best and final offer, and that we
15 would use that final offer to -- as part of the framework to go
16 forward with the plan and disclosure statement. So I think we
17 could do that actually pretty quickly.

18 So I understand what Your Honor said, but in light of
19 the fact that I agree with you, I think it has been adjourned a
20 few times and we wanted to kind of, like, move this case
21 forward as quickly as reasonably possible. That was what I was
22 going to suggest, is that we go back to the parties who
23 submitted offers and that we give them one last opportunity to
24 submit what I would view as a best and final. My
25 understanding, also, from --

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1 THE COURT: How long do you envision that process
2 taking?

3 MR. SULLIVAN: I don't think we would need more than a
4 couple of weeks, Your Honor.

5 THE COURT: Okay. Okay. Sorry, go ahead. Anything
6 else? You were starting to say something else.

7 MR. SULLIVAN: No. So we were going to communicate to
8 the parties that that we were looking for a best and final, and
9 that the -- based upon my discussions with the City, I think in
10 order for that to work, I think the City and the bank would
11 like to see a proposal that didn't have any financing
12 contingencies associated with it. Right? We were looking for,
13 basically, a cash proposal, not without any kind of, like,
14 mortgage financing related to it.

15 THE COURT: Okay.

16 MR. SULLIVAN: Just to keep it simple and move the
17 case along.

18 THE COURT: Yeah. And do you -- look, what's your
19 reaction to the idea of just denying the motion and just giving
20 you a new deadline to start over with a new disclosure
21 statement and plan filed within, say, thirty days, in light of
22 what you've just said?

23 MR. SULLIVAN: Yeah, certainly, Your Honor, if that's
24 what you do, we'll certainly do it. It wouldn't be too hard
25 for us to just make a few changes and refile it. But given

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1 where we are, I think it might just be easier to give us
2 another couple of weeks --

3 THE COURT: Okay.

4 MR. SULLIVAN: -- to revise what we have rather than
5 restart the whole process. But I'll defer to Your Honor and
6 what you think is best.

7 THE COURT: No. Look, I think really, it's evolved --
8 I don't know if evolved is the word. From where you started to
9 where you are now, A, has shown a tremendous amount of change
10 and B, remains in flux. And so I just don't see that -- I
11 think it just makes sense to start over, personally.

12 Okay. The key players we haven't heard from yet are
13 the City and Ms. Keenan for the debtor. Ms. Keenan, I haven't
14 heard from you for a while. Do you want to add anything on
15 today?

16 MS. KEENAN: Yes, Your Honor. I want to make a
17 record.

18 THE COURT: Certainly. But let me ask if it's
19 concerning -- please be concise if it's going to be focused on
20 what you consider ill treatment by the City and/or Bank of Hope
21 and unfair negotiating. I mean, in other words, you can do it
22 but try to be lean because I don't want to just devolve into a
23 fact-finding on that.

24 MS. KEENAN: You got it. All right. The March 3rd
25 status report filed by Bank of Hope, document 147. I had --

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1 they asked everybody's comments on the status report, and I
2 wanted to see what was on the table. And I received the status
3 report that indicated that Bank of Hope has not yet shared
4 these expressions of interest with the debtor or its counsel.
5 Because Bank of Hope does not feel it appropriate to do so at
6 this time, and the City agrees with this position. Bank of
7 Hope intends to provide a further update prior to the hearing.

8 Now, we have a real conundrum here. We have Bank of
9 Hope basically forcing Grace Chan into bankruptcy. Her only
10 real major asset is the mall. And the Bank of Hope is putting
11 together offers, and it's the Bank of Hope who is getting these
12 proposals now. And according to the City, who has been
13 speaking with representatives of the debtor, it's the Bank of
14 Hope who has been adverse to the debtor's proposal.

15 Now, the City was given an appraisal of this property,
16 Your Honor, that with anchor tenants and the modification of
17 the lease as proposed, has a value of twenty million dollars.
18 And the Bank of Hope would be willing to accept 1.5 million
19 dollars from one of the offers -- and there's probably more now
20 that we're hearing about today -- and then go after Grace Chan
21 for the balance of the claim, even though that they are giving
22 away her major asset.

23 THE COURT: Can I ask, is there an anchor tenant now?

24 MS. KEENAN: It's not open right now, Your Honor, but
25 we have the restaurant, which is the entire second floor, who

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1 was approached by the Lam group and says he has no interest in
2 working with them. They're going to have to go in and bring
3 another restaurant in there. And we still have the IFresh
4 wants to come in on the first floor. And we still have our
5 financing in order. And ironically, they put on the record
6 today they don't want any deal that is contingent on financing.
7 But they should be aware that whoever buys this property, if
8 they're going to do anything like they did across the street,
9 they'll get in there and then they refinance it and take the
10 cash out. And that's what they did at 75 Broadway. So they're
11 going to do that with this one, too, is my estimate. But going
12 back to this --

13 THE COURT: So can I make an observation, Ms. Keenan?

14 MS. KEENAN: Yes?

15 THE COURT: The exclusivity is over, but there is no
16 legal impediment to debtor proposing a plan. Is that something
17 that the debtor has been pursuing at all?

18 MS. KEENAN: Oh, we are doing it and we are actively
19 doing it. And we have many people on the ground. We know --
20 Chinatown is an amazing community. They all talk, and we all
21 know who talking to who and we know what local officials are
22 trying to back the debtor. And there has been an indication
23 that the City is reaching out to have a meeting with the debtor
24 in DCAS. And so there are still ongoing negotiations. But Mr.
25 Sullivan made it a point to put on the record today that they

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1 don't want any offer that might be contingent on financing.

2 They don't want that. They --

3 THE COURT: No. I have that point, and your point
4 that if they get an all-cash person, they're just going to
5 refinance and end up being a debt-driven --

6 MS. KEENAN: Yes.

7 THE COURT: -- structure anyway.

8 MS. KEENAN: It's what they did -- they've already
9 done that, Your Honor, and so at this point, for us not to be
10 involved in anything, it's always the City and the bank, the
11 City and the bank. They don't want the debtor involved in this
12 at all. And this is transparency 101. They are stealing --
13 the Chans ran this place for thirty-five years. They built it.
14 And they are not being even considered anymore.

15 And I understand the U.S. Trustee in the Chan case has
16 a pending motion to dismiss or convert. Well, he has to be
17 aware that the reason we're in here is because Grace's main
18 asset is basically being taken from her, and that is the East
19 Broadway Mall. So what I would ask, Your Honor, is that, we
20 are going to be making more proposals. I think that the debtor
21 should be invited into this negotiation because you're taking
22 away their asset. And so what's going on right now is
23 unconscionable and is now on the record.

24 And we've asked Bank of Hope to at least put in
25 writing that the reason that they would not support the

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1 debtor's offer was because the City would never approve it, and
2 without the City's approval, we could never do a plan. All
3 right? But the powers that be, the people we're talking with,
4 said we need a letter so we can show it to the City, that the
5 reason the Bank of Hope wouldn't support us is because the City
6 wouldn't support us. Because the City is telling the debtor
7 that, oh, it's not us who doesn't want to work with you, it's
8 the Bank of Hope. And the Bank of Hope is telling us, no, it's
9 not us, it's the City. Well, we need to know what it is, and
10 we need it in writing so that we can go to the people that want
11 to be part of this process and have no more things being
12 whispered in the background. Let's put it all out there.

13 THE COURT: Look, okay, so I take your point -- or
14 points, plural, I guess, Ms. Keenan. I mean, let me just say,
15 I guess the bank -- I would encourage all parties to discuss
16 and give full and fair consideration to the proposal of any
17 person, either an existing party or an outside party, right?
18 That's -- I mean, the name of the game is value maximization
19 for the estate.

20 I will observe that this debtor ran up very
21 substantial arrearages, including in the pre-COVID time period.
22 So you can't just ignore that. And that might be a fair
23 consideration for business partners. And it is a reality of
24 the situation that the debtor finds itself in. So you can't
25 ignore that. That is a real thing, but any source of value-

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1 maximizing solutions should be seriously considered and
2 pursued. So I'll just sort of leave it at that.

3 Let me hear from the City. I think that's the player
4 we haven't yet heard from. And again, I'm going to just -- oh,
5 I'm sorry. Let me ask Ms. Keenan before I do that.

6 Do you have any concern about my simply denying the
7 disclosure statement at this moment, which is what's before me
8 today, and then let things move forward?

9 MS. KEENAN: Oh, I think the disclosure statement has
10 to be done. So, yes.

11 THE COURT: Okay. And you have a time period in mind
12 for a deadline for the filing of a new disclosure statement and
13 plan? I will say to continue along the road of transparency
14 about my thought process, I have in mind imposing a deadline
15 for the filing of a disclosure statement and plan, because that
16 sets up the prospect of dismissal under 1112(b)(4)(J) if that
17 deadline isn't met, because (b)(4)(J) says dismissal for cause
18 can occur if there is a failure to file a disclosure statement
19 or to file or confirm a plan within the time fixed by this
20 title or by order of the Court. And so this has been dragging
21 on so long that I think I just need to impose some discipline
22 by teeing up a basis for dismissal under that provision, if
23 progress isn't brought to fruition quickly.

24 Does that make sense to you, Ms. Keenan?

25 MS. KEENAN: Yes, Your Honor. Yes.

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1 THE COURT: Okay. Great. All right.

2 Let me turn to the City and take your temperature and
3 hear what you want to say.

4 MR. KASS: Thank you, Your Honor. Zachary Kass from
5 the New York City Law Department Corporation Counsel's Office
6 for the City. It's a little hard to tell where to start. I
7 guess, specifically, with Your Honor's indication of where you
8 want to -- how to proceed at this point --

9 THE COURT: Well, so look, I'll tell you, I am
10 focusing on I think the City's role doesn't have a direct role
11 with Ms. Chan, as far as I know.

12 MR. KASS: Correct.

13 THE COURT: So the City's role is really as landlord
14 on East Broadway Mall. And the narrow question I have really
15 is, does the City have a position on what I voiced as my
16 tentative intended ruling coming in here today, which is to
17 simply deny the disclosure statement motion and couple it with
18 an order setting a deadline, which right now, I'm thinking of
19 will be thirty days from date of entry of the order for the
20 filing of a disclosure statement and new plan.

21 MR. KASS: Your Honor, we have no -- I have no problem
22 with that in terms of procedure. I think it would be helpful
23 to have a deadline. I think, however, that there are three
24 serious proposals on the table now, which all of whom seem to
25 be from substantial players who are serious and have made some

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1 effort to demonstrate their ability to carry forward on their
2 proposals and their ability to do so. I would not like to
3 foreclose that route simply because the time hasn't previously
4 been ripe for that kind of process to happen.

5 THE COURT: Well so that goes to the deadline -- to
6 me, that --

7 MR. KASS: Correct.

8 THE COURT: So that goes for how long makes sense. I
9 mean, Mr. Sullivan's telling me he thinks he can get best and
10 finals out of people in two weeks, which suggests a disclosure
11 statement and plan could be worked up and filed within a month.
12 Does that make sense? Do you have some other idea?

13 MR. KASS: No, I think that works. If the Bank of
14 Hope is able to work to that schedule. Because, again, if we
15 don't do a confirmed plan here, we're back to the situation
16 where either the Court will dismiss the case, which would not
17 be something that the City would like to see happen, or the
18 City would have to take the position that it was simply
19 entitled to possession of the leasehold and take the property
20 and start the process for getting a new tenant in there through
21 an alternative process, which will take some time.

22 So we are all hoping that the bankruptcy process can
23 help -- can work. So I think a combination of some discipline
24 and some flexibility, which frankly, we're very grateful that
25 Your Honor has had that combination up till now, should

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1 continue to give us a path forward that'll work for everybody.

2 As far as --

3 THE COURT: Okay. Got it. Yeah, go ahead.

4 MR. KASS: As far as the debtor is concerned, again,
5 as far as I understand, I don't know what conversations the
6 debtor may be having, quote, "with the City" that don't go
7 through DCAS or through the Corporation Counsel's office, but
8 again, to my knowledge, nobody's ever foreclosed the debtor
9 from making any serious offer. Again, if the debtor wants to
10 make a serious offer, that's fine. They can certainly forward
11 it to us and we'll forward it to our client and it will be
12 given attention.

13 THE COURT: Okay. Got it. Yeah, I will say that --
14 and I hope, Ms. Keenan, I'll just observe, that strikes me as a
15 good idea, if you want to -- the City is a many-tendrilled
16 thing, but one thing you can certainly do is convey anything
17 that you can term a settlement offer to the City's counsel in
18 this matter, which is Mr. Kass and Ms. Koenig, and they will be
19 obliged to forward it to their appropriate clients. And that
20 is a mechanism for you to get it considered. And you will
21 then -- maybe it'll be smiled upon, and if it isn't, you can
22 take whatever action you think appropriate, but you will have
23 taken that step, okay? All right.

24 MS. KEENAN: Your Honor? Your Honor?

25 THE COURT: Yeah. Go ahead, Ms. Kennan.

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1 MS. KEENAN: Sorry. Sally Keenan.

2 I'm just concerned now because we are going to be
3 pursuing this and getting an offer in there and getting an
4 audience with DCAS and with the bank and we would want
5 everything transparent, as I said earlier. I'm concerned about
6 the two weeks now because nothing moves quickly. They're
7 reviewing three proposals right now, all right? And now we
8 have to add the debtor's proposal. And there have been some
9 changes in that, as well.

10 THE COURT: Well, look --

11 MS. KEENAN: I think two weeks is not enough.

12 THE COURT: Are you ready to go with a proposal now
13 Ms. Keenan, on behalf of debtor?

14 MS. KEENAN: We are ready to go on behalf of the
15 debtor, and I don't want it to be given -- I want it to be
16 given due consideration, and two week -- it's so important,
17 that I think two weeks may be too little, in light of the fact
18 that there's three other bids, which I haven't even seen, and
19 we should be given the opportunity to compete against those
20 bids and we should be given what those numbers are.

21 THE COURT: I've --

22 MS. KEENAN: Why is this all -- why is this all being
23 secretive? Why haven't we been told that these increased
24 offers? How much are they? Who are they from?

25 THE COURT: All right. Look, I'm not going to dictate

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1 any particular bidding process at this point. I mean, all that
2 we're talking about -- remember, we're here on a motion to
3 approve a disclosure statement and -- which I contemplate
4 denying. And then on my own accord, which I have authority to
5 do, I want to impose an appropriate deadline for the disclosure
6 statement -- the filing of a disclosure statement in connection
7 with a proposed plan.

8 I don't want to start by pushing it out farther, all
9 right? So I guess my inclination would be I can make it, say,
10 five weeks from tomorrow. Tomorrow's a Friday. Five weeks
11 from tomorrow equals thirty-six days. More than that, I've
12 been told by the proponents, the people who are in the process,
13 that they think they can be ready in thirty days. I'll give
14 you a slight amount more cushion, more than that. Look, I've
15 given lots of long rope to allow things to develop, and it
16 hasn't been satisfactory. So I think deadlines are necessary.
17 So we'll just do that. All right?

18 I haven't heard from Mr. Bruh. Anything just focusing
19 on -- and I want to --what I'm going to do is resolve the East
20 Broadway Mall piece, which is simply a disclosure statement
21 approval motion right now, and then we'll circle back to Chan.

22 So anything you want to say about the mall case, Mr.
23 Bruh?

24 MR. BRUH: Thank you, Your Honor. Mark Bruh for the
25 United States Trustee. So specifically with East Broadway

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1 Mall, I guess our concern is we're back to square one where we
2 were five months ago. I don't know what the new disclosure
3 statement will be and plan, but there might be competing plans
4 from what I hear right now. We had objections. Some of them
5 have been resolved. I still think some of the objections have
6 not been resolved. If it's denied, I hope they'll be addressed
7 in any subsequent plan. To the extent the Court is going to
8 deny it, we would ask everything to be on a short leash. I
9 know that Your Honor had to reinstate our motion by April 5th.
10 I would just add --

11 THE COURT: I'm sorry, which motion is that?

12 MR. BRUH: We had a motion to convert, which Your
13 Honor denied and -- without prejudice, for us to just file a
14 notice of reinstatement by April 5th. I --

15 THE COURT: Yep. That's fine. That's in the mall
16 case?

17 MR. BRUH: Yes.

18 THE COURT: Yeah, okay.

19 MR. BRUH: And we might want to supplement it based
20 upon that was a motion that we filed many months ago, Your
21 Honor, and it was carried several times.

22 THE COURT: Yeah. Let me just say, I think --

23 MR. BRUH: I could file a new motion. I'm sorry, Your
24 Honor, if you would just allow us that opportunity. So but the
25 facts have changed here, so.

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1 THE COURT: Yeah, let me say this. You're right.
2 I've been -- there was that motion, and I have just been
3 carrying out your deadline to keep it in tandem so that you can
4 reinstate at any time without having to reinvent the wheel if
5 you don't want to. But we just keep pushing that date out as
6 the outside date moves. I would be fine again, adjourning your
7 date from -- it's currently, you just said, April 5th -- to
8 some date after the deadline for filing a disclosure statement
9 or plan. If you want to reinstate your motion earlier, that's
10 within your rights. If you want to sit tight for another
11 round, that's fine.

12 I completely agree with the tenor of your remarks that
13 this case has been really spinning its wheels for an
14 excessively long time, and it's time to bring it to a head.
15 What I've articulated on the disclosure statement coupled with
16 a new deadline for the filing of a new plan, and new disclosure
17 statement, is my -- what I've come up with is an attempt to get
18 things moving.

19 Does that work for you, Mr. Bruh?

20 MR. BRUH: It does, Your Honor. We appreciate Your
21 Honor's assistance in this matter to move it along. We hope
22 we'll get to a conclusion here. So yeah, we would just ask
23 then that the deadline be pushed. We can reinstate our motion.
24 And we'd also ask that we be allowed to supplement it based --

25 THE COURT: Yes.

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1 MR. BRUH: -- on any new information or just let's see
2 how the chips fall. We don't know what's going to be there.

3 THE COURT: Yeah, I'm having a deja vu reaction. I
4 think we have the exact same discussion again and again, and I
5 give you the same reassurance. Yes. My intention is that your
6 deadline to reinstate your prior motion to convert or
7 dismiss --

8 MR. BRUH: Right.

9 THE COURT: -- will be pushed out an appropriate
10 length of time, and that you will be at liberty to supplement
11 your motion as you see fit.

12 Let me also say, cued by -- sparked by something Mr.
13 Bruh said -- The U.S. Trustee's office had a variety of
14 objections to the disclosure statement motion as filed. I'm
15 going to deny because -- for failure to satisfy the core
16 requirement of Section 1125, that the disclosure statement
17 contain adequate information of a kind and in sufficient detail
18 to allow a hypothetical investor typical of the holders of
19 claims or interests in a case to make an informed judgment
20 about the plan. Because the plan is in flux -- in flux, excuse
21 me -- it's impossible to meet that standard in the
22 circumstances present here, and I'm going to deny the motion
23 for that reason. That is my oral ruling on the motion, in
24 fact.

25 I will say the U.S. Trustee's office raised a number

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1 of other objections, and any proponent of a plan should review
2 those carefully and give them weight. I'm not rejecting the
3 validity of those, nor am I specifically endorsing any of them,
4 but take them into account, consider talking to the U.S.
5 Trustee. Come forward with something that actually is going to
6 pass muster.

7 But the basis of my ruling today is very simply that,
8 in the absence of clarity on what the plan is going to say,
9 despite repeated adjournments, the current disclosure statement
10 approval motion simply cannot satisfy the requirement of 1125
11 that it provide adequate information. And so for that reason
12 alone, I deny as of right now, okay? So that's where we're at
13 on the 1125.

14 I think what's going to make sense for housekeeping is
15 the following on the disclosure statement motion. First off,
16 so let's see, I think I'll ask the Bank of Hope as the main
17 proponent of the plan, to order the transcript. We need to
18 have a record of today's hearing and oral ruling. I will
19 enter -- I will have the Court generate and enter a very simple
20 order denying the disclosure statement for reasons stated on
21 the record. And that same order will require that a new
22 disclosure statement, approval motion, and proposed plan must
23 be filed no later than, and I think I'll go with the date five
24 weeks from tomorrow, okay? And I will use that wording so that
25 anyone who wants to present a proposed plan can do so and they

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1 are aware of the time frame, okay?

2 Then, I guess, to avoid Mr. Bruh having to write a
3 separate order and go to all that trouble, Mr. Bruh, I think
4 I'll just get --

5 MS. KEENAN: You're frozen, Your Honor.

6 MR. BRUH: The Court -- Yeah, I didn't know if it was
7 me or the Court is froze.

8 MR. KASS: I think you're back, Your Honor.

9 THE COURT: Am I back? Can you hear me?

10 MR. BRUH: Yes.

11 THE COURT: Okay. I pushed various buttons, but I
12 think I just froze. I think it was just a transmittal issue.
13 Okay. So let me ask again. Sorry, I will say for the
14 transcript purposes. Apparently, I froze for a minute. So I
15 was talking, and I don't know what people lost. I'll just
16 reset.

17 The Court's going to enter an order. It's going to
18 deny the disclosure statement motion. It's going to impose a
19 deadline of five weeks from tomorrow to file -- for any party
20 to file a proposed plan along with a disclosure statement
21 approval motion. And that's also going to move Mr. Bruh's
22 deadline to -- or the U.S. Trustee's Office's deadline to
23 reinstate its prior motion to convert to, I will say, at some
24 point, maybe a week after the disclosure statement deadline.

25 MR. BRUH: Thank you, Judge.

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1 THE COURT: Okay. Do you need any more precise
2 wording than that or is that good enough?

3 MR. BRUH: It's fine by me.

4 THE COURT: Okay. Great. Okay. So I'll generate an
5 order and you understand what I'm getting at. Okay.

6 MS. KEENAN: Your Honor?

7 THE COURT: Yeah, Ms. Keenan?

8 MS. KEENAN: Sorry. Sally Keenan.

9 Five weeks from today to -- for any party to propose a
10 plan or disclosure statement. We went through this back in
11 October or November, at which time, Mr. Kass put on the record
12 that it would be a waste of time for the debtor to put in a
13 plan because the City will never approve it. And if you can't
14 get the City to approve it -- let me finish this -- if you
15 can't get the city to approve it, it's a waste of time and
16 court time. We need to have some clarification as to if we put
17 a plan in, Bank of Hope, would they support it? Because --

18 THE COURT: No, I'm sorry, Ms. Keenan. You can't
19 negotiate on the record. I mean, I need to set a deadline.

20 MS. KEENAN: I understand.

21 THE COURT: This has been going on for months. It's
22 a 2019 case. Whatever your dynamic is, it is. And it's just
23 time to get things on the road. So I'm not going to unravel
24 the time limits. And I also don't want to have a sort of
25 coerced back and forth on the record.

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1 Let me just say this. I will direct that if Ms.
2 Keenan wants to speak with representatives of the City and/or
3 the bank, that that conversation occur today. You can have an
4 off-the-record conversation, but I don't want to make that a
5 feature of an on-the-record hearing. Okay?

6 MS. KEENAN: Okay.

7 THE COURT: Great.

8 MR. KASS: Very good, Your Honor.

9 THE COURT: Thank you. Okay, so that, I think,
10 resolves the motion for approval of the disclosure statement,
11 which has been carried excessively long. And let's come back
12 to the case of Ms. Chan and see, in light of today, where we're
13 going to come out.

14 Let me turn to Mr. Bruh. Really, what we have, what's
15 calendared is the U.S. Trustee's motion to convert Ms. Chan's
16 case to Chapter 11 or dismiss it. I think, honestly, the
17 motion makes out ample cause for that and the question -- but
18 with the thought that dismissal would be superior to
19 conversion, except that today, Ms. Blumenfeld points out,
20 there's great concern that the bank will deprive Ms. Chan of
21 other property of hers, which I think means her home.

22 And so where is the U.S. Trustee on whether it wants
23 to have that motion heard today?

24 MR. BRUH: Thank you, Your Honor. Mark Bruh for the
25 United States Trustee.

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1 At the beginning, you had asked the bank its position
2 because it is either Ms. Blumenfeld or Ms. Keenan had raised
3 the guarantee that Ms. Chan has in connection with East
4 Broadway Mall, which is, I guess, the main impetus of her
5 bankruptcy. I'm not entirely sure. They say East Broadway
6 Mall is an asset that appears to be underwater, that there's no
7 equity in it. So I'm not sure how it is an asset. To the
8 extent she has a home, she has a homestead exemption, which
9 would be very beneficial these days. I don't think her equity
10 is above her homestead exemption. I would defer to Ms.
11 Blumenfeld on that matter.

12 She does have an interest, Ms. Chan, in another
13 entity, which appears to be an asset which manages a building.
14 I don't know if that's an asset of her personal bankruptcy
15 estate or not. Based upon our operating report, she's not
16 drawing any income from that entity, that her only income has
17 been Social Security since you have had the case before you,
18 because we know that Chapter 13 that went to a Chapter 11 and
19 then it was transferred to Your Honor about nine months ago.

20 So if she has no assets, then it would seem to me that
21 a conversion would be the best scenario to discharge everything
22 at this time. Then you wouldn't have to worry about the bank
23 going after her. But maybe we need to hear from Mr. Sullivan a
24 little bit more regarding that, or the debtor, as to that claim
25 in that bankruptcy.

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1 THE COURT: Okay. I'll give Mr. Sullivan a chance to
2 say anything he wants on behalf of the bank, if anything.

3 MR. SULLIVAN: Yes, Your Honor. So look, we had, as
4 you may recall actually, the bank did file a motion for a
5 relief from stay. Ms. Blumenfeld responded to it. We hadn't
6 yet filed a reply, but in order to give the debtor's proposal a
7 chance and for the parties an opportunity to discuss a global
8 settlement, we kind of put all the deadlines on that on hold.

9 We've communicated, I think, pretty clearly to the
10 chance what a global settlement might need to look like. We
11 haven't really seen much progress on that of late. If the case
12 does stay in Chapter 11, at some point in time, and probably
13 pretty soon, the bank will probably ask Your Honor to put that
14 back on the calendar so we can go forth and obtain a relief
15 from stay. Ms. Chan, I don't believe, resides in any of the
16 two properties that we're really talking about. I think she
17 has a rental property that she lives in, so that's not really a
18 concern.

19 But yeah, so look, I think we've been very clear to
20 Ms. Keenan and Ms. Blumenfeld as to exactly what the bank is
21 looking for. We've made it clear to them that we thought that
22 the main obstacle in their proposal was the financing aspect to
23 it, and they haven't done anything to address that specific
24 concern. I'm being very direct. And so look, if we can't get
25 any progress in that direction, then we'll have no choice but

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1 to go, obviously, in other directions. And that's what we've
2 been doing. And if the case is not converted or dismissed at
3 some point soon, we will probably send Your Honor a letter
4 requesting that the hearing on the relief stay motion be put
5 back on the calendar with an opportunity for us to file our
6 reply papers.

7 THE COURT: Okay. All right. So let me turn it to
8 Ms. Blumenfeld. You've heard that kind of sobering statement
9 from the bank and you've heard from Mr. Bruh. What do you
10 advocate I ought to do?

11 MS. BLUMENFELD: Again, if it's a pick poison type of
12 thing, Your Honor, for sure, its dismissal. It would be a
13 travesty of justice for her to get a discharge for \$9,000 of
14 credit card debt. I think that -- and I also think that will
15 affect the East Broadway Mall case because we don't know what a
16 Chapter 7 Trustee will do because there are debts that are
17 cross-collateralized between her personally, as well as between
18 East Broadway Mall.

19 That being said, Mr. Sullivan pointed out about her
20 not living at the property. During COVID, she had rented some
21 property, I think it was to stay away from people in order for
22 her not to get sick. I have not double checked with her
23 exactly where she's living, but the Whitestone property is her
24 home. Mr. Sullivan also alluded to something about
25 negotiations. The last time I was involved in negotiations on

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1 this with Ms. Chan, was close to a year ago. I mean, it has
2 been a long time since anyone has involved me on behalf of
3 Grace Chan in any negotiations.

4 I would suggest a third option, Your Honor. Perhaps
5 send this to mediation. I think everything should be sent to
6 mediation, actually, to see if something can be worked out. I
7 think that it will help. If there's a delay, anyway, in the
8 other case of five weeks, I don't think it's going to hurt
9 anybody. And perhaps there is a consensual resolution that can
10 be had.

11 THE COURT: Okay. Thanks.

12 Let me go back to Mr. Bruh, whose motion it is and I'm
13 obliged -- statutorily required to decide it if the movant --
14 unless the movement expressly consents to push it.

15 So how do you want to proceed, Mr. Bruh? Excuse me,
16 how does the Office of the U.S. Attorney's Office -- I
17 shouldn't personalize it -- wish to proceed?

18 MR. BRUH: Thank you, Your Honor. Mark Bruh for the
19 United States Trustee.

20 I don't know where mediation would get us at this
21 point. These issues have been out here for quite some time. I
22 don't know how --

23 THE COURT: I'll say, I think I share that reaction,
24 honestly. I just see it as being a burner of more time and I
25 don't see a likelihood of success.

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1 MR. BRUH: Your Honor, yeah, at this time we would, if
2 the Court is inclined not to convert it, we would ask that then
3 the case to be dismissed and the chips fall as they may. I'm
4 not sure on East Broadway Mall they'll ever come to addressing
5 Ms. Chan's claims or not. I just don't know. If it's only
6 \$9,000 in debt, then I agree with Ms. Blumenfeld that it should
7 not be converted to seek a discharge of that sum of unsecured
8 debt and that the case should be dismissed.

9 THE COURT: Okay. And I think -- let me just make
10 sure you had earlier moved on other sub parts of 1112 before,
11 and I think then you supplemented to really bring to bear 1112
12 (b)(4)(a) which is continuing loss or diminution of the estate
13 in absence of a reasonable likelihood of rehabilitation. Is
14 that what you're primarily relying on at this point?

15 MR. BRUH: Yes. As of today, when we brought the
16 motion, the debtor was behind on operating reports and fees.
17 They have since been paid as of last week, four or five
18 operating reports were filed. But we have shown in the
19 operating reports that were filed at the time that there's very
20 little funds coming into this case to confirm a plan, Your
21 Honor, and we would --

22 THE COURT: Right.

23 MR. BRUH: -- (indiscernible) diminution of the
24 estate.

25 THE COURT: Okay. I'll say I'm ready to rule on that.

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1 And the U.S. Trustee is certainly within its rights to ask for
2 a ruling at this point that's been carried off. And I'm going
3 to grant the motion and -- of the U.S. Trustee to convert or
4 dismiss the case. They had originally moved seeking conversion
5 under Section 1112 of the Code, but I am going to hold that
6 dismissal is the more appropriate measure to be taken here.

7 I will note that -- first, that under Section
8 1112(b)(3) of the Code, the Court is required to commence the
9 hearing of a motion to convert or dismiss not later than thirty
10 days after the filing of the motion and to decide it not later
11 than fifteen days after the commencement of such a hearing,
12 unless the movant expressly consents to a continuance for a
13 specific period of time or compelling circumstances prevent the
14 Court from meeting the time limits established by this
15 paragraph.

16 The U.S. Trustee has shown a lot of flexibility and
17 has repeatedly consented to a continuance of this hearing to
18 try to give people an opportunity to work something out that
19 would avoid the necessity of dismissal or conversion, but it is
20 no longer making that offer, as of today. And I therefore, am
21 statutorily required to decide the motion.

22 Further, having carefully reviewed the record of Ms.
23 Chan's case as a whole, including having reviewed her monthly
24 operating reports which reflect very low income stream and
25 considering the status of the bankruptcy case, of an entity

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1 that she has a substantial interest in, which is East Broadway
2 Mall, in which case, it's -- I can't be optimistic that a
3 successful resolution is likely to occur quickly and in a way
4 that's going to make a difference in Ms. Chan's individual
5 case.

6 So I therefore conclude that the requirements of
7 Section 1112(b)(4)(A) have been demonstrated here, or I should
8 say the required showing, namely that the estate of Ms. Chan is
9 engaging in a substantial or continuing loss to or diminution
10 of the estate. She came in with a modest amount of cash and
11 her monthly operating reports reflect a continuing drain down
12 to a quite low amount on hand at this point. Coupled with the
13 absence of reasonable likelihood of rehabilitation, I simply
14 don't see and haven't been presented any concrete basis to
15 think that rehabilitation is feasible.

16 I do have discretion whether conversion or dismissal
17 is in the best interests of creditors and the estate and which
18 is the appropriate course. Here I conclude that dismissal is
19 more humane and more aligned with the interests of Ms. Chan
20 herself, and it's in the --

21 MS. KEENAN: You're frozen, Your Honor.

22 THE COURT: Okay. Am I back now?

23 MS. BLUMENFELD: You are. You left off with more
24 humane, Your Honor.

25 THE COURT: Okay. I'll get our IT people to look at

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1 this. I always assume I'm doing something terrible when I
2 freeze, but it's not me this time. Okay. Let me -- so let
3 me -- yes. So I was in the middle of a list of factors, but I
4 will just try to pick up where I left off.

5 I have discretion to determine -- to choose a remedy
6 between dismissal and conversion. I believe here dismissal is
7 appropriate. I guess I was cut off saying -- commenting that
8 dismissal is more humane for Ms. Chan herself, because her own
9 counsel has advised that that's likely the case, if forced to
10 pick a poison. And further here, where she has a very low
11 amount of unsecured debt, there are few interested creditors
12 and I see very, very little to be gained by invoking -- by
13 bringing into play a Chapter 7 Trustee. All I see is added
14 expense burdening the estate for little to no conceivable
15 benefit. And for that reason, I think dismissal is the most
16 appropriate resolution of the motion. Okay?

17 So on this one, I'm going to ask the Office of the
18 U.S. Trustee to please submit a proposed order referencing the
19 Court's oral ruling today, which states its reasons and
20 granting the motion and imposing dismissal.

21 Mr. Bruh, is that doable for you?

22 MR. BRUH: Absolutely, Your Honor. We'll submit an
23 order, and when we send it to chambers, I'll copy all the
24 parties here today.

25 THE COURT: Okay. Thank you very much. And as I

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1 said, we will ourselves generate an order on the East Broadway
2 Mall matter. Does anyone have anything else to raise that we
3 can or should do today?

4 Okay. Hearing nothing. Thank you all for your
5 efforts. Good luck. Really push. And I hope to see a well
6 thought out, properly presented, legally compliant disclosure
7 statement and plan by five weeks from tomorrow. And we can try
8 to put this property, which I am very fond of from personal
9 exposure, back to productive use for the community and the City
10 and everyone. And it'll hopefully become a nice little beehive
11 of economic activity again. Okay?

12 MS. KEENAN: Thank you, Your Honor.

13 THE COURT: So thanks very much. And we are
14 adjourned. Take care.

15 MR. BRUH: Thank you, Judge.

16 MR. KASS: Thank you, Your Honor.

17 (Whereupon these proceedings were concluded)
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I N D E X

RULINGS:

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Motion to approve disclosure statement
denied

28 17

Motion to dismiss Chapter 11 case
granted

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C E R T I F I C A T I O N

I, Kim Claeys, certify that the foregoing transcript is a true
and accurate record of the proceedings.



Kim Claeys

eScribers

7227 North 16th Street, Suite #207

Phoenix, AZ 85020

Date: March 25, 2023

March 23, 2023

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